



STATE OF NEW YORK

UNEMPLOYMENT INSURANCE APPEAL BOARD

PO Box 15126

Albany NY 12212-5126

DECISION OF THE BOARD

Mailed and Filed: DECEMBER 06, 2022

IN THE MATTER OF:

Appeal Board No. 625058 A

PRESENT: MICHAEL T. GREASON, MEMBER

The Appeal Board, on its own motion pursuant to Labor Law § 534, has reopened

and reconsidered Appeal Board Nos. 621907 and 621908, which sustained the initial determinations charging the claimant with overpayments of \$11,310 in benefits recoverable pursuant to Labor Law § 597 (4); \$7,200 in Federal

Pandemic Unemployment Compensation (FPUC) repayable pursuant to Section 2104 (f)(2) of the Coronavirus Aid, Relief and Economic Security (CARES) Act of 2020; \$16,057.50 in Pandemic Emergency Unemployment Compensation (PEUC) repayable pursuant to § 2107 (e) (2) of the Coronavirus Aid, Relief, and

Economic Security (CARES) Act of 2020; and \$1,800 in Lost Wages Assistance (LWA) benefits of recoverable pursuant to 44 CFR Sec. 206.120 (f)(5); and reducing the claimant's right to receive future benefits by 80 effective days and charging a modified monetary penalty of \$5,185.12, on the basis that the claimant made willful misrepresentations to obtain benefits.

Our review of the record reveals that the case should be remanded to hold a hearing. Further testimony and evidence are necessary before the above issues are decided.

To that end, the Commissioner of Labor is directed to be represented at the remand hearing. The Commissioner should be prepared to provide testimony and evidence explaining why the claimant is required to repay of all the benefits he received for the week ending May 2, 2021, despite being ineligible for benefits on April 26 and 27 only. The Commissioner's witness(es) should also

explain how the amounts of the overpaid PEUC and FPUC benefits were derived and whether these amounts are accurate. The witness(es) should then also explain whether the revised monetary penalty of \$5,185.12 should be further reduced and, if so, to what amount.

The parties may produce any other relevant witnesses or documents. The Administrative Law Judge may take any other testimony or evidence necessary to decide the issues.

Now, based on all of the foregoing, it is

ORDERED, that the decisions of the Appeal Board are rescinded; and it is further

ORDERED, that the decisions of the Administrative Law Judge are rescinded; and it is further

ORDERED, that the cases are remanded to the Hearing Section to hold a hearing on recoverable overpayments of benefits and wilful misrepresentation, only, upon due notice to all parties and their representatives; and it is further

ORDERED, that the hearing shall be conducted so that there has been an opportunity for the above action to be taken, and, so that at the end of the hearing, all parties will have had a full and fair opportunity to be heard; and it is further

ORDERED, that an Administrative Law Judge shall render a new decision, on the above issues, which shall be based on the entire record in this case, including the testimony and other evidence from the original and the remand hearings, and which shall contain appropriate findings of fact and conclusions of law.

MICHAEL T. GREASON, MEMBER